

**Report by the Inspector-General of Intelligence and Security: “Inquiry into possible New Zealand intelligence and security agencies’ engagement with the CIA detention and interrogation programme 2001 – 2009”**

**Response by Richard Woods, Director NZSIS 1999 – 2006  
Monday 9 September 2019**

The Inspector-General’s inquiry on this subject, dealing in my case with a period thirteen-eighteen years ago, has been going on for over two years. I have cooperated fully with the inquiry, including meeting the Inspector-General, answering all her questions to the best of my ability, and suggesting areas of the NZSIS’s archives in which she might usefully look for information relevant to her inquiry.

The Inspector-General has found no evidence of NZSIS complicity in any of the CIA’s unlawful activities. She states that the former Directors did not break the law and were not unconcerned about New Zealand’s Human Rights obligations. She says her report does not seek to apportion blame to individuals for past failures or omissions.

Nonetheless the Inspector-General repeatedly criticises the former Directors for “failure” to identify what she sees as the legal and reputational risks posed for the New Zealand intelligence agencies and the New Zealand Government by the agencies’ cooperation with the CIA. She maintains that the Directors should have made their own inquiries about the allegations of unlawful conduct by the CIA and conducted a rigorous and independent assessment of those allegations. (How they would reliably have done that without questioning the CIA about them, is left unclear.)

Judging by dates in her report, the main period during which this rigorous assessment should have occurred was between mid-2004, by when there was quite a lot of material in the public domain about the allegations, and the end of 2006, by when the CIA programme was being wound down. The NZSIS, not the GCSB, is the main counterpart of the CIA. During that period I was the head of the NZSIS.

Therefore her criticism of “failure”, if it is at all justified, should be aimed only at me, not at the Directors of the GCSB or at my successor at the NZSIS. But I do not believe her criticism is justified.

- The allegations were not confirmed during my time in office and were officially denied by the United States’ authorities. Although the Inspector-General says the Directors’ responses cannot be assessed only with the benefit of hindsight, the CIA’s unlawful activities were officially confirmed only later; she cites in particular the U.S. Senate report of 2014.
- She maintains that this “failure” created legal risk for the Directors as departmental heads. But her report does not provide legal analysis to support the existence of that risk, at least at the time I was in office.
- She pays inadequate attention to the Directors’ actual statutory functions. The first statutory function of the NZSIS, as set out in the NZSIS Act, is “To obtain,

correlate, and evaluate intelligence relevant to security, and to communicate any such intelligence to such persons, and in such manner, as the Director considers to be in the interests of security". The definition of security in the Act in my time included, "the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act".

- The NZSIS's intelligence-gathering was in accordance with the NZSIS Act and with the Government's articulation of its intelligence requirements. After 9/11 and then Bali, there was a greatly increased requirement for intelligence on terrorism, to help achieve the Government's objective of ensuring that New Zealand was neither the victim nor the source of an act of terrorism.
- She acknowledges that the Government wished to improve relations with the United States, including restoring the intelligence links which had been circumscribed after the ANZUS breakdown in the 1980s. Consistent with that wish, and in accordance with my statutory functions, my objective was to ensure that New Zealand received from the CIA intelligence relevant to New Zealand's security, including intelligence about terrorism.
- The NZSIS did receive from the CIA secret reports about terrorism. It is now known that some of those reports were based on information obtained from people subjected to torture or enhanced interrogation techniques. But we did not know that at the time and there was nothing in the reports to indicate it. The only time we provided questions to the CIA in relation to such reports was in 2003.
- The public reporting of alleged abuses relied upon by the Inspector-General was accessible to anyone in the New Zealand government system. The NZSIS's role in receiving intelligence from the CIA was known to many across the government system. No one in that system suggested curtailment or reconsideration of the NZSIS's cooperation with the United States.
- The Inspector-General acknowledges that any such suggestion would have required careful cross-government and political consideration. But she maintains that the Directors should have initiated such consideration, including because they "were uniquely placed to ask questions", ignoring the fact that asking questions of the CIA risked incurring the result that would require prior political consideration.
- She mentions the long-standing principle of intelligence-sharing, that the sources and methods used to acquire sensitive intelligence are strenuously protected. "Need to Know" applies among the Five Eyes partners and is practiced between and within New Zealand intelligence agencies. But she dismisses the importance of this principle.
- The NZSIS played no part in any of the United States' operations that entailed the use of enhanced interrogation techniques. It would therefore have been inappropriate for me to have questioned my American counterparts about the allegations. To have done so would have risked jeopardising the receipt of intelligence relevant to New Zealand's security and required by the New Zealand Government. It would thus have run counter to my statutory responsibilities as Director of Security.